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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/510,349	02/22/2000	Takashi Kurimoto	034620-049	2612

7590	12/16/2003

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EXAMINER
HOM, SHICK C

ART UNIT	PAPER NUMBER
2666	14

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 July 2003 and 12 September 2003</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-27</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>1-3,5 and 17</u> is/are rejected.

7)☒ Claim(s) <u>4,6-16 and 18-27</u> is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☒ All b)☐ Some * c)☐ None of:

        1.☒ Certified copies of the priority documents have been received.

        2.☐ Certified copies of the priority documents have been received in Application No. _____.

        3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8</u>.

4)☐ Interview Summary (PTO-413) Paper No(s). _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: .

DETAILED ACTION

Response to Arguments

1.   Applicant's arguments filed 9/12/03 have been fully

considered but they are not persuasive.

In page 12 lines 11-16 and page 13 lines 1-7, applicant

argued that Fijolek does not teach monitoring traffic

information relating to datagrams/is not persuasive because col.

19 lines 38-46 and col. 8 lines 1-7 which disclose a cable modem

system having the capability of monitoring data channel traffic

usage wherein the cable modem supports transmission and

reception of IP datagram, clearly anticipate monitoring traffic

information relating to datagrams as now recited in claim 1.

Further, in response to applicant's argument that the references

fail to show certain features of applicant's invention, it is

noted that the features upon which applicant relies (i.e., the

traffic information being as recited in the specification at

page 12 line 15) are not recited in the rejected claim(s).

Although the claims are interpreted in light of the

specification, limitations from the specification are not read

into the claims.   See *In re Van Geuns*, 988 F.2d 1181, 26

USPQ2d 1057 (Fed. Cir. 1993).

In page 12 lines 17-21 and page 13 lines 8-14, applicant

argued that Fijoleck in view of Hyziak does not teach a computed

preference value being inserting in the header of a datagram

whereby the preference value quantifies the results of

evaluation of the user's usage of communications is not

persuasive because Fijoleck in col. 3 lines 35-41 which recite

monitoring channel usage to identify unbalanced conditions, and

col. 12 lines 35-42 and col. 18 lines 30-49 which recite use of

configuration, type-of-service, flow and service identification

information to improve operation of the system by providing

traffic engineering to balance channel usage clearly anticipate

a computed preference value.   Further, Hyziak in Fig. 3 clearly

shows preferences values, i.e. cost, time security, quality of

service, reporting option, handling instruction, disposition

request quantifying the results of evaluation of the user's

usage of communications being inserted in the "header," e.g. in

the part before the body, of a datagram as now recited in claims

1, 2, and 17.

Claim Rejections - 35 USC § 103

2.   The following is a quotation of 35 U.S.C. 103(a) which

forms the basis for all obviousness rejections set forth in this

Office action:

> (a) A patent may not be obtained though the invention is not
>
> identically disclosed or described as set forth in section 102 of this
>
> title, if the differences between the subject matter sought to be
>
> patented and the prior art are such that the subject matter as a whole
>
> would have been obvious at the time the invention was made to a person
>
> having ordinary skill in the art to which said subject matter pertains.
>
> Patentability shall not be negatived by the manner in which the
>
> invention was made.

This application currently names joint inventors.   In

considering patentability of the claims under 35 U.S.C. 103(a),

the examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered

therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to

point out the inventor and invention dates of each claim that

was not commonly owned at the time a later invention was made in

order for the examiner to consider the applicability of 35

U.S.C. 103© and potential 35 U.S.C. 102(e), (f) or (g) prior art
under 35 U.S.C. 103(a).

3.   Claims 1-3, 5, and 17 are rejected under 35 U.S.C. 103(a)
as being unpatentable over Fijolek et al. in view of Hyziak et
al.

4.   Regarding claim 1: Fijolek et al. disclose the traffic
monitoring equipment including a traffic monitoring function for
monitoring traffic information (col. 19 lines 38-46) relating to
datagrams (col. 8 lines 1-7) that have been transmitted by a
user to a network or datagrams that have been received from said
network by said user during a specific time interval between a
pre-determined earlier point in time and a current point in time
(col. 13 lines 1-64), and storing monitored results (col. 9
lines 13-18 and col. 12 lines 56-67); the preference value
computation function for evaluating said user's usage of
communications, based on traffic information obtained by said
traffic monitoring function quantifying results of evaluation
(col. 3 lines 35-41) and converting results of quantification to
a preference value (col. 12 lines 35-42; col. 13 lines 1-12; and
col. 18 lines 30-49).

Regarding claim 2: Fijolek et al. disclose the datagram

transfer system (col. 8 lines 1-7) for receiving datagrams sent

from a user terminal in a datagram transmission node and

forwarding said datagrams to a destination address specified on

a header of said datagrams (col. 8 lines 25-35) wherein an

impact of said datagrams on network operation is evaluated by a

traffic monitoring equipment (col. 19 lines 38-46) according to

traffic information on said datagrams, evaluation results are

quantified (col. 3 lines 35-41), and quantified results are

converted (col. 12 lines 35-42; col. 13 lines 1-12; and col. 18

lines 30-49).

Regarding claim 17: Fijolek et al. disclose the method

for performing prioritized transfer of datagrams (col. 13 lines

14-23) transmitted by users for being transferred through a

network including the steps of evaluating an impact

of transmitting a datagram on network operation (col. 19 lines

38-46); computing a preference value for said datagram to

reflect evaluation result (col. 3 lines 35-41); and performing

prioritized forwarding of datagrams according to preference

values computed for successive datagrams (Table 6).

Regarding claim 5: Fijolek et al. disclose the traffic

information includes a length of a datagram or time intervals

between transmissions of successive continual datagrams (col. 9

lines 41-52 and Table 3).

Fijolek et al. did not teach the preference value insertion

function for inserting said preference value in a header of a

datagram being processed at said current point in time as in

claims 1, 2, and 17; the device for performing prioritized

forwarding of the datagram according to the preference value

specified in the header as in claim 3.

Hyziak et al. teach that it is known to provide the

preference value insertion function for inserting said

preference value in a header of a datagram being processed at

said current point in time and the device for performing

prioritized forwarding of the datagram according to the

preference value specified in the header as shown in Fig. 3 in

the field of digital and multiplex communications for the

purpose of permitting sender of a transmission to elect message

delivery via a network based upon cost to the sender, based upon

relative levels of security, exhibits the fastest delivery

(i.e., minimum traffic Icad), and quality of service preference

selection to control message delivery via that network that is

best suited for the type of information being transmitted based

upon network characteristics.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to inserting said preference value in a header of a datagram being processed at said current point in time including the device for performing prioritized forwarding of the datagram according to the preference value specified in the header as taught by Hyziak et al. to the system of Fijolek et al. The motivation for inserting said preference value in a header of a datagram being processed at said current point in time including the device for performing prioritized forwarding of the datagram as taught by Hyziak et al. to the system of Fijolek et al. being that it would provide the added feature of permitting sender of a transmission to elect message delivery via a network based upon cost to the sender, based upon relative levels of security, exhibits the fastest delivery (i.e., minimum traffic load), and quality of service preference selection to control message delivery via that network that is best suited for the type of information being transmitted based upon network characteristics.

Allowable Subject Matter

1.   Claims 4, 6-16 and 18-27 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Conclusion

5.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6.   Any response to this final action should be mailed to:

Box AF

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communications;

please mark "EXPEDITED PROCEDURE")

Or:

(for informal or draft communications, please

label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal

Park II, 2121 Crystal Drive, Arlington. VA., Sixth

Floor (Receptionist).

Any inquiry concerning this communication or earlier
communications from the examiner should be directed to Shick Hom
whose telephone number is (703) 305-4742. The examiner's
regular work schedule is Monday to Friday from 8:00 am to 5:30
pm EST and out of office on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao, can be reached at (703) 308-5463.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Technology Center 2600 Customer Service Office whose telephone number is (703) 306-0377.

DANG TON
PRIMARY EXAMINER

SH

December 11, 2003